



## **DEPARTMENT OF LABOR**

### **Employee Benefits Security Administration**

#### **Proposed Extension of Information Collection Requests Submitted for Public Comment**

**AGENCY:** Employee Benefits Security Administration, Department of Labor

**ACTION:** Notice

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**SUMMARY:** The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the ADDRESSES

section of this notice. ICRs also are available at [reginfo.gov](http://www.reginfo.gov) (<http://www.reginfo.gov/public/do/PRAMain>).

**DATES:** Written comments must be submitted to the office shown in the Addresses section on or before [INSERT DATE THAT IS 60 DAYS FOLLOWING THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Washington, DC 20210, (202) 693-8410, FAX (202) 693-4745 (these are not toll-free numbers).

#### **I. SUPPLEMENTARY INFORMATION:**

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transaction exemptions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** Notice Requirements of the Health Care Continuation Coverage Provisions

**Type of Review:** Extension of a currently approved collection of information

**OMB Number:** 1210-0123

**Affected Public:** Individuals or households; Business or other for-profit; Not-for-profit institutions

**Respondents:** 649,000

**Responses:** 15,662,333

**Estimated Total Burden Hours:** 503,815

**Estimated Total Burden Cost (Operating and Maintenance):** \$20,217,778

**Description:** The continuation coverage provisions of section 601 through 608 of the Employee Retirement Income Security Act of 1974 (ERISA) (and parallel provisions of the Internal Revenue Code (Code)) generally require group health plans to offer qualified beneficiaries the opportunity to elect continuation coverage following certain events that would otherwise result in the loss of coverage. Continuation coverage is a temporary extension of the qualified beneficiary's previous group health coverage. The right to elect continuation coverage allows individuals to maintain group health coverage under adverse circumstances and to bridge gaps in health coverage that otherwise could limit their access to health care. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provides the Secretary of Labor (the Secretary) with authority under section 608 of ERISA to carry out the continuation coverage provisions. The Conference Report that accompanied COBRA divided interpretive authority over the COBRA provisions between the Secretary and the Secretary of the Treasury (the Treasury) by providing that the Secretary has the authority to issue regulations implementing the notice and disclosure requirements of COBRA, while the Treasury is authorized to issue regulations defining the required continuation coverage. The ICR contained in these rules

was approved by the Office of Management and Budget (OMB) under OMB Control Number 1210–0123, which is currently scheduled to expire on September 30, 2013.

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** Model Employer CHIP Notice

**Type of Review:** Extension of a currently approved information collection

**OMB Number:** 1210-0137

**Affected Public:** Individuals or households; business or other for-profit institutions; not-for-profit institutions.

**Respondents:** 7,056,000

**Responses:** 203,795,000

**Estimated Total Burden Hours:** 1,053,000

**Estimated Total Burden Cost (Operating and Maintenance):** \$25,271,000

**Description:** On February 4, 2009, President Obama signed the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA, Pub. L. 111–3). Under ERISA section 701(f)(3)(B)(i)(I), PHS Act section 2701(f)(3)(B)(i)(I), and section 9801(f)(3)(B)(i)(I) of the Internal Revenue Code, as added by CHIPRA, an employer that maintains a group health plan in a State that provides medical assistance under a State Medicaid plan under title XIX of the Social Security Act (SSA), or child health assistance under a State child health plan under title XXI of the SSA, in the form of premium assistance for the purchase of coverage under a group health plan, is required to make certain disclosures. Specifically, the employer is required to notify each employee of potential opportunities currently available in the State in which the employee resides for

premium assistance under Medicaid and CHIP for health coverage of the employee or the employee's dependents.

ERISA section 701(f)(3)(B)(i)(II) requires the Department of Labor to provide employers with model language for the Employer CHIP Notices to enable them to timely comply with this requirement. This ICR relates to the Model Employer CHIP Notice, which was approved by OMB under OMB Control Number 1210-0137 and currently scheduled to expire on September 30, 2013.

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** Disclosures for Participant Directed Individual Account Plans Under ERISA Section 404(c)

**Type of Review:** Extension of a currently approved collection of information

**OMB Number:** 1210-0090

**Affected Public:** Individuals or households; Business or other for-profit; Not-for-profit institutions

**Respondents:** 483,000

**Responses:** 738,206,912

**Estimated Total Burden Hours:** 6,583,000

**Estimated Total Burden Cost (Operating and Maintenance):** \$ 221,000,000

**Description:** Section 404(c) of ERISA provides that, if an individual account pension plan permits a participant or beneficiary to exercise control over assets in his or her account and the participant or beneficiary in fact exercises such control, the participant or beneficiary shall not be deemed to be a fiduciary by such exercise of control and no

person otherwise a fiduciary shall be liable for any loss or breach that results from the participant's or beneficiary's exercise of control.

The Department's regulation at 29 CFR 2550.404c-1 describes the circumstances in which a participant or beneficiary will be considered to have exercised independent control over the assets in his or her individual account as contemplated in section 404(c). The regulation specifies information that must be made available to participants or beneficiaries in order for them to exercise independent control over the assets in their individual accounts. The regulation provides that the relief from fiduciary liability specified in section 404(c) is not available with respect to a transaction undertaken by a participant or beneficiary unless the specific information is provided to the participant or beneficiary. The ICR contained in this rule was approved by OMB under OMB Control Number 1210-0090, which is scheduled to expire on October 31, 2013.

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** Affordable Care Act Grandfathered Health Plan Disclosure, Recordkeeping Requirement, and Change in Carrier Disclosure

**Type of Review:** Extension of a currently approved collection of information

**OMB Number:** 1210-0140

**Affected Public:** Individuals or households; Business or other for-profit; Not-for-profit institutions.

**Respondents:** 2,200,000

**Responses:** 56,457,000

**Estimated Total Burden Hours:** 1,077,800

**Estimated Total Burden Cost (Operating and Maintenance):** \$561,000

**Description:** Section 1251 of the Patient Protection and Affordable Care Act provides that certain plans and health insurance coverage in existence as of March 23, 2010, known as grandfathered health plans, are not required to comply with certain statutory provisions in the Act. To maintain its status as a grandfathered health plan, the interim final regulations (29 CFR 2590.715–1251(a)(3)) require the plan to maintain records documenting the terms of the plan in effect on March 23, 2010, and any other documents that are necessary to verify, explain or clarify status as a grandfathered health plan. The plan must make such records available for examination upon request by participants, beneficiaries, individual policy subscribers, or a State or Federal agency official.

The interim final regulations (29 CFR 2590.715–1251(a)(2)) also require a grandfathered health plan to include a statement in any plan material provided to participants or beneficiaries describing the benefits provided under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan within the meaning of section 1251 of the Act, that being a grandfathered health plan means that the plan does not include certain consumer protections of the Act, and providing contact information for participants to direct questions regarding which protections apply and which protections do not apply to a grandfathered health plan and what might cause a plan to change from grandfathered health plan status and to file complaints. The ICR contained in this interim final rule was approved by OMB under OMB Control Number 1210–0140, which is currently scheduled to expire on November 30, 2013.

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** PTE 92-6: Sale of Individual Life Insurance or Annuity Contracts By a Plan

**Type of Review:** Extension of a currently approved collection of information

**OMB Number:** 1210-0063

**Affected Public:** Individuals or households; Business or other for-profit; Not-for-profit institutions

**Respondents:** 21,533

**Responses:** 334,661

**Estimated Total Burden Hours:** 14,745

**Estimated Total Burden Cost (Operating and Maintenance):** \$101,670

**Description:** PTE 92–6 exempts from the prohibited transaction restrictions of ERISA the sale of individual life insurance or annuity contracts by a plan to participants, relatives of participants, employers any of whose employees are covered by the plan, other employee benefit plans, owner-employees or shareholder-employees. In the absence of this exemption, certain aspects of these transactions might be prohibited by section 406 of ERISA.

Among other conditions, PTE 92–6 requires that pension plans inform the insured participant of a proposed sale of a life insurance or annuity policy to the employer, a relative, another plan, an owner-employee, or a shareholder employee. This recordkeeping requirement constitutes an information collection within the meaning of the PRA, for which the Department has obtained approval from OMB under OMB Control No. 1210–0063. The OMB approval is currently scheduled to expire on December 31, 2013



**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** Regulation Relating to Loans to Plan Participants and Beneficiaries Who Are Parties In Interest With Respect to The Plan

**Type of Review:** Extension of a currently approved collection of information

**OMB Number:** 1210-0076

**Affected Public:** Individuals or households; Business or other for-profit; Not-for-profit institutions

**Respondents:** 1,900

**Responses:** 1,900

**Estimated Total Burden Hours:** 0

**Estimated Total Burden Cost (Operating and Maintenance):** \$673,000

**Description:** ERISA prohibits a plan fiduciary from causing the plan to engage in a transaction if he knows or should know that such transaction constitutes direct or indirect loan or extension of credit between the plan and a party in interest. ERISA section 408(b)(1) exempts from this prohibition loans from a plan to parties in interest who are participants and beneficiaries of the plan, provided that certain requirements are satisfied. In final regulations published in the Federal Register on July 20, 1989, (54 FR 30520), the Department provided additional guidance on section 408(b)(1)(C), which requires that loans be made in accordance with specific provisions in the plan. The ICR contained within this rule was approved by OMB under OMB Control Number 1210-0076, which is scheduled to expire on December 31, 2013.

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** PTE 91-55: Transactions Between Individual Retirement Accounts and Authorized Purchasers of American Eagle Coins

**Type of Review:** Extension of a currently approved collection of information

**OMB Number:** 1210-0079

**Affected Public:** Individuals or households; Business or other for-profit; Not-for-profit institutions

**Respondents:** 3

**Responses:** 10,286

**Estimated Total Burden Hours:** 349

**Estimated Total Burden Cost (Operating and Maintenance):** \$3,125

**Description:** PTE 91–55 permits purchases and sales by certain “individual retirement accounts,” as defined in Internal Revenue Code section 408 (IRAs) of American Eagle bullion coins (“Coins”) in principal transactions from or to broker-dealers in Coins that are “authorized purchasers” of Coins in bulk quantities from the United States Mint and which are also “disqualified persons,” within the meaning of Code section 4975(e)(2), with respect to IRAs. The exemption also describes the circumstances under which an interest free extension of credit in connection with such sales and purchases is permitted. In the absence of an exemption, such purchases and sales and extensions of credit would be impermissible under ERISA.

Among other conditions, the exemption requires certain information related to covered transactions in Coins to be disclosed by the authorized purchaser to persons who direct the transaction for the IRA. Currently, it is standard industry practice that most of

this information is provided to persons directing investments in an IRA when transactions in Coins occur. The exemption also requires that the disqualified person maintain for a period of at least six years such records as are necessary to allow accredited persons, as defined in the exemption, to determine whether the conditions of the transaction have been met. Finally, an authorized purchaser must provide a confirmation statement with respect to each covered transaction to the person who directs the transaction for the IRA. The requirements constitute information collections within the meaning of the PRA, for which the Department has obtained approval from OMB under OMB Control No. 1210–0079. The OMB approval is currently scheduled to expire on December 31, 2013.

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** PTE 85-68: Permit Employee Benefit Plans to Invest in Customer Notes of Employers

**Type of Review:** Extension of a currently approved collection of information

**OMB Number:** 1210-0094

**Affected Public:** Individuals or households; Business or other for-profit; Not-for-profit institutions

**Respondents:** 325

**Responses:** 325

**Estimated Total Burden Hours:** 0

**Estimated Total Burden Cost (Operating and Maintenance):** \$1

**Description:** Pursuant to section 408 of ERISA, the Department has authority to grant an exemption from the prohibitions of sections 406 and 407(a) if it can determine that the

exemption is administratively feasible, in the interest of participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan. PTE 85-68 describes the conditions under which a plan is permitted to acquire customer notes accepted by an employer of employees covered by the plan in the ordinary course of the employer's primary business activity. The exemption covers sales as well as contributions of customer notes by an employer to its plan. Specifically, the exemption requires that the employer provide a written guarantee to repurchase a note which becomes more than 60 days delinquent, that such notes be secured by a perfected security interest in the property financed by the note, and that the collateral be insured. The exemption requires records pertaining to the transaction to be maintained for a period of six years for the purpose of ensuring that the transactions are protective of the rights of participants and beneficiaries. This recordkeeping requirement constitutes an information collection within the meaning of the PRA, for which the Department has obtained approval from OMB under OMB Control No. 1210-0094. The OMB approval is currently scheduled to expire on December 31, 2013.

**Agency:** Employee Benefits Security Administration, Department of Labor

**Title:** Default Investment Alternatives under Participant Directed Individual Account Plans

**Type of Review:** Extension of a currently approved collection of information

**OMB Number:** 1210-0132

**Affected Public:** Individuals or households; Business or other for-profit; Not-for-profit institutions

**Respondents:** 648,000

**Responses:** 83,358,375

**Estimated Total Burden Hours:** 782,000

**Estimated Total Burden Cost (Operating and Maintenance):** \$32,116,000

**Description:** Section 404(c) of ERISA states that participants or beneficiaries who can hold individual accounts under their pension plans, and who can exercise control over the assets in their accounts “as determined in regulations of the Secretary [of Labor]” will not be treated as fiduciaries of the plan. Moreover, no other plan fiduciary will be liable for any loss, or by reason of any breach, resulting from the participants’ or beneficiaries exercise of control over their individual account assets.

The Pension Protection Act (PPA), Public Law 109–280, amended ERISA section 404(c) by adding subparagraph (c)(5)(A). The new subparagraph says that a participant in an individual account plan who fails to make investment elections regarding his or her account assets will nevertheless be treated as having exercised control over those assets so long as the plan provides appropriate notice (as specified) and invests the assets “in accordance with regulations prescribed by the Secretary [of Labor].” Section 404(c)(5)(A) further requires the Department of Labor (Department) to issue corresponding final regulations within six months after enactment of the PPA. The PPA was signed into law on August 17, 2006.

The Department of Labor issued a final regulation under ERISA section 404(c)(5)(A) offering guidance on the types of investment vehicles that plans may choose as their “qualified default investment alternative”(QDIA). The regulation also outlines two information collections. First, it implements the statutory requirement that plans

provide annual notices to participants and beneficiaries whose account assets could be invested in a QDIA. Second, the regulation requires plans to pass certain pertinent materials they receive relating to a QDIA to those participants and beneficiaries with assets invested in the QDIA as well to provide certain information on request. The ICRs are approved under OMB Control Number 1210-0132, which is scheduled to expire on December 31, 2013.

## **II. Focus of Comments**

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: May 9, 2013

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Joseph S. Piacentini

Director, Office of Policy and Research

Employee Benefits Security Administration

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